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Federal Communications Commission

DA 01-1669

2001 JUL 13 P 4: 32

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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|                                 |   |                        |
|---------------------------------|---|------------------------|
| In the Matter of                | ) |                        |
|                                 | ) |                        |
| Amendment of Section 73.202(b), | ) |                        |
| Table of Allotments,            | ) |                        |
| FM Broadcast Stations.          | ) |                        |
|                                 | ) |                        |
| (Eminence, Missouri)            | ) | MM Docket No. 01-151 ✓ |
|                                 | ) | RM-10167               |
|                                 | ) |                        |
| (Encinal, Texas)                | ) | MM Docket No. 01-152   |
|                                 | ) | RM-10168               |
|                                 | ) |                        |
| (Tilden, Texas)                 | ) | MM Docket No. 01-153   |
|                                 | ) | RM-10169               |
|                                 | ) |                        |

**NOTICE OF PROPOSED RULE MAKING**

**Adopted: July 11, 2001**

**Released: July 13, 2001**

**Comment Date: September 4, 2001**

**Reply Date: September 18, 2001**

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a multiple docket *Notice of Proposed Rule Making* setting forth separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules. Each petitioner has stated that it will apply for its requested channel, if allotted. We believe that each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. This is a multiple docket *Notice of Proposed Rule Making* issued in accordance with the Commission's *Public Notice* released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single *Notice of Proposed Rulemaking*. Each proposal has its own docket and rule making number and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the *Public Notice*, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions for rule making by avoiding duplicative actions. We request comments and/or counterproposals to the following proposals:

**A. MM Docket No. 01-151; RM-10167**

**Petitioner:** Ozark Broadcasting, Inc.

Lauren A. Colby, Esq.  
Law Offices of Lauren A. Colby  
10 E. Fourth Street  
Post Office Box 113  
Frederick, MD 21705-0113

**Proposal:** Allot Channel 276C3 at Eminence, Missouri as the community's first local aural transmission service.

| <u>Community</u>   | <u>Present</u> | <u>Proposed</u> |
|--------------------|----------------|-----------------|
| Eminence, Missouri | --             | 276C3           |

**Coordinates:** 37-16-07 NL and 91-15-05 WL

**Additional Information:** Petitioner states that no modification of any allocation is required to achieve the goal of its proposal. The proposed allotment requires a site restriction of 16.1 km (10 miles) northeast of Eminence at the coordinates indicated above.

Eminence is an incorporated community in Shannon County and has a population of 582 persons. Eminence is listed as a City in the 1990 Census Statistics. Shannon County is located in the southeast part of the State of Missouri and has a population of 7,613 persons.

**FCC Contact:** Deborah A. Dupont (202) 418-7072

**B. MM Docket No. 01-152; RM-10168**

**Petitioner:** Charles Crawford  
4553 Bordeaux Avenue  
Dallas, Texas 75205

**Proposal:** Allot Channel 259A at Encinal, Texas as the community's first local aural transmission service.

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| <u>Community</u> | <u>Present</u> | <u>Proposed</u> |
|------------------|----------------|-----------------|
| Encinal, Texas   | --             | 259A            |

**Coordinates:** 28-03-51 NL and 99-14-47 WL

**Additional Information:** The proposed allotment requires a site restriction of 10.9 km (6.8 miles) east of Encinal at the coordinates indicated above. The proposed allotment will require concurrence by Mexico because Encinal is located within 320 kilometers (199 miles) of the Mexican border.

Encinal is a city in La Salle County and has a population of 620 persons. La Salle County is located in the southern part of the State of Texas and has a population of 5,254 persons.

In compliance with §1.52 of the Commission's rules, petitioner is requested to include with his comments verification that the statements contained in the petition are accurate to the best of his knowledge.<sup>1</sup>

**FCC Contact:** Deborah A. Dupont (202) 418-7072

**C. MM Docket No. 01-153; RM-10169**

**Petitioner:** Charles Crawford  
4553 Bordeaux Avenue  
Dallas, Texas 75205

**Proposal:** Allot Channel 245C3 at Tilden, Texas as the community's first local aural transmission service.<sup>2</sup>

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| <u>Community</u> | <u>Present</u> | <u>Proposed</u> |
|------------------|----------------|-----------------|
| Tilden, Texas    | --             | 245C3           |

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<sup>1</sup> Although the petitioner's request was signed, it failed to include an affidavit verifying that the statements contained in the petition were accurate to the best of the affiant's knowledge. Section 1.52 of the Commission's Rules require that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. See also *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, 3919, n.41 (1990). The petitioner therefore is requested to rectify this omission in his comments.

**Coordinates:** 28-29-13 NL and 98-30-41 WL

**Additional Information:** The proposed allotment requires a site restriction of 4.6 km (2.9 miles) northeast of Tilden at the coordinates indicated above. The proposed allotment will require concurrence by Mexico because Tilden is located within 320 kilometers (199 miles) of the Mexican border.

Tilden is the county seat of McMullen County and has a population of 450 people, according to the *2000 Rand McNally Commercial Atlas*. Petitioner further states that Tilden has its own post office, volunteer fire department, and church, and that 40 business establishments in Tilden have been given credit ratings by Dun & Bradstreet.

In compliance with §1.52 of the Commission's rules, petitioner is requested to include with his comments verification that the statements contained in the petition are accurate to the best of his knowledge. *See* note 1, *supra*.

**FCC Contact:** Deborah A. Dupont (202) 418-7072

3. Comments, reply comments, counterproposals and other pleadings filed in response to this multiple docket *Notice of Proposed Rule Making* should reference **only** the specific docket to which the filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before **September 4, 2001**, and reply comments on or before **September 18, 2001**, and are advised to read the Appendix for the proper procedures. Additionally, a copy of any filing should be served on the petitioner listed for the particular docket.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Section 603 and 604 of the Regulatory Flexibility Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 Fed.Reg. 11549 (February 9, 1981).

6. For further information concerning a proceeding listed above, contact the FCC contact listed for that proceeding. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been

decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in the particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

## APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM (TV) Table of Allotments, Section 73.202(b) (73.606(b)) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of

service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C.